

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2841 OF 2005

Arun Nathuram Gaikwad	...	Petitioner
v/s.		
Municipal Corporation of		
Gr.Mumbai & ors.	...	Respondents

Mr.K.R.Dhanuka with Mr.M.B.Jadhav for petitioner.
Mr.K.K.Singhvi with Ms.P.A.Purandare for
res.Nos.1 & 2.
Mr.S.H.Doctor with Mr.K.P.Jain i/by Tushar
Goradia & Co. for res.Nos.3 to 15 & 17.

**CORAM : H.L. GOKHALE &
ABHAY S. OKA, JJ.**

DATED : 23rd February 2006

ORAL ORDER : (Per H.L.Gokhale, J.)

1. Heard the learned Counsel for the parties.
2. The Petition is filed pointing out that respondent Nos.3 to 17 are in the process of constructing a temple in an extremely crowded area. It is their case that this has been so going on without any permission of the Municipal Corporation. It is also pointed out through the Exhibits annexed to the Petition that the atmosphere in the locality has been disturbed on account of this construction and there have been disputes.
3. It is not disputed that no permission

whatsoever is obtained for the purposes of this construction. It is nowhere stated in the reply of respondent No.14 that there is any such permission in support of this construction. A reply has been filed by one Shri R.S.Kurnur, Assistant Engineer of the Municipal Corporation. It has been

stated therein that the construction proposal was given way back in the year 1999 and the then Assistant Engineer of the concerned Ward had informed these respondents by letter dated 19th June 1999 that various compliances were required, failing which the proposal cannot proceed further. It is further stated that no such necessary documents were supplied. Ultimately a stop work notice came to be issued. In utter disregard of such notice, the construction work had proceeded.

4. It is material to note that adequate access is not available to this property. In para 4(b) of the reply of B.M.C. it is stated that at the highest access of 6 ft. is available. That is also in view of an order obtained in the City Civil Court. The Petition seeks that this structure be demolished.

5. Mr.Doctor, learned Counsel appearing for respondent Nos.3 to 17, submits that they have applied for regularisation and that application may be permitted to be processed. That is a matter between the petitioner and the Municipal Corporation. As far as the present Petition is concerned, it seeks demolition of this construction. It is very clear that the construction is illegal, without any authority of law and without any permission of the Municipal Corporation.

6. On the last date we recorded that the matter will be heard finally on the adjourned date. In fact, Mr.Jain who appeared on that date had sought time to take instructions as to whether respondent Nos.3 to 17 will agree to remove the construction themselves. Today from the defence which is canvassed, it is clear that they are not agreeable to remove the construction.

7. In the circumstances, we have no option but to enforce the law. We allow this Petition in terms of prayer (a) and direct the Municipal Corporation to demolish the unauthorised and illegal construction. There will also be an injunction restraining respondent Nos.3 to 17 from

carrying out any further construction in view of the order which has been passed in terms of prayer (a).

8. Petition stands disposed of in view of the above order. There will be no order as to costs.

9. Mr.Doctor appearing for respondent Nos.3 to 17 applies for stay of this order. On the request of Mr.Doctor, the necessary action will not be taken for a period of four weeks.

(H.L. GOKHALE, J.)

(ABHAY S. OKA, J.)